

Progressives and the Era of Trustbusting

Theodore Roosevelt is often given credit for launching the era of trustbusting, but he preferred government regulation of monopolies. His successor, William Howard Taft, wanted the courts to break up unlawful monopolies. Woodrow Wilson eventually adopted a combination of both approaches.

In 1776, Adam Smith argued in *The Wealth of Nations* that free-market capitalism would bring prosperity for all by finding new ways for workers to divide their labor. The Industrial Revolution utilized machines and methods of mass production that magnified this division of labor. By the end of the 19th century, this resulted in an explosion of competitive businesses in the United States.

Adam Smith viewed wide-open competition as the driving force of the free-market system. Competition, however, sometimes resulted in price wars, wasteful duplication of production, and bankruptcies. Profit-minded business leaders discovered that the way around the instability of competition was to dominate the market by creating cartels and bigger industrial organizations.

“Captains of industry” like John D. Rockefeller and J.P. Morgan formed huge corporations owned by stockholders. The companies grew through two strategies—vertical integration and horizontal integration. In vertical integration, a company operates on more than one stage of production and distribution. For example, the Pabst Brewing Company owned breweries, saloons, and even forest lands for the wood to make beer barrels.

In horizontal integration, a company expands by merging, usually by buying out rival firms. Between 1897 and 1901, more than 2,000 mergers took place in the United States. This horizontal integration reduced the number of competitive companies in an industry.

Defenders of “corporate bigness” claimed that the new super-corporations created jobs and efficiently produced and distributed goods and services at a lower cost. They further argued that property and contract rights permitted business-



President Theodore Roosevelt believed that the best way to control monopolies was through government regulation. (Library of Congress)

es to pursue their economic interests as they saw fit without government interference. This reflected the *laissez faire* (let business alone) idea of capitalism.

Others, however, attacked corporate abuses practiced by those they called “robber barons.” The large corporations sometimes sold their products below cost until they drove competitors into bankruptcy or forced them to merge. Once a dominant firm eliminated most of its competition, it became a monopoly that could charge any price and pay any wage it wanted.

By 1880, John D. Rockefeller had merged about 100 independent oil refineries with his Standard Oil Company. He controlled about 90 percent of the U.S. oil business. (Oil was used to light kerosene lamps, utilized throughout the country.) In 1882, Rockefeller formed the Standard Oil Trust. He set up a board of trustees to take control of all the stock from his many vertically and horizontally connected companies.

The Progressives Demand Antitrust Laws

By forming the Standard Oil Trust, Rockefeller was trying to hide that Standard Oil was a monopoly. Soon corporate leaders in other industries such as railroads, cigarette making, and sugar refining organized their own trusts.

The trusts speeded up mergers and eliminated competition among their members. They also concentrated control of national wealth in the hands of a few millionaire families. As monopolies, the trusts often could dictate whatever prices and wages they wanted with little fear of competition.

Newspapers and magazines wrote stories raising questions about the trusts. As public criticism mounted during the 1880s, the American public called for government control over the powerful trusts. Reformers, called Progressives, demanded that states pass antitrust laws to make cartels and monopolistic practices illegal and to regulate railroad rates. These laws, however, were ineffective because most trusts operated across state lines. Only the federal government could regulate interstate commerce.

In 1887, Congress passed the federal Interstate Commerce Act. This law required interstate railroads to charge "reasonable and just" rates. But the Interstate Commerce Commission (ICC), which monitored the railroads, ended up with little authority to enforce its rulings.

In 1890, Congress passed the first federal antitrust law, the Sherman Act. It outlawed "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade." The Sherman Act also made it a crime "to combine or conspire . . . to monopolize any part of the trade or commerce among the several states."

In the decade following passage of the Sherman Act, the generally pro-business presidents did little to enforce it. In fact, during this period, more mergers occurred and more trusts were formed than ever before.

In 1895, the U.S. Supreme Court ruled that the Sherman Act could regulate interstate sales and transportation. But the court said the act could not ban the merger of manufacturing assets that established monopolies, even by companies operating in interstate commerce. The court reasoned that manufacturing was not part of interstate commerce. In another case that year, the Supreme Court decided that the Sherman Act could bar union strikes that interfered with interstate commerce. Ironically, while Congress intended the Sherman Act to combat the big trusts, it was becoming a major weapon against organized labor.

TR: From "Trustbuster" to "Regulator"

Vice President Theodore Roosevelt became president in September 1901, following the assassination of President William McKinley. In his First Annual Message to Congress, Roosevelt expressed his admiration for the "strong and forceful men" who had "done great good" by building up the commerce of the nation. But he also observed that "there are real and grave evils" that needed to be corrected.

Roosevelt told Congress he opposed banning monopolies. Instead, he preferred that the federal government "assume power of supervision and regulation over all corporations doing an interstate business."

Despite his generally pro-business outlook, Roosevelt disliked the corruption and arrogance of the new class of super rich. In 1902, public demands for "trustbusting" (breaking up the monopolies) prompted him to file suit under the Sherman Act against the biggest railroad trust in the country.

In 1901, James J. Hill, E.H. Harriman, and J.P. Morgan had made a secret deal to combine their railroad stocks in a "holding company," another type of trust. Their new company, the Northern Securities Company, controlled all the major railroads in the Northwestern states.

News of Roosevelt's antitrust lawsuit shocked business leaders. J.P. Morgan went to the White House to meet with Roosevelt. "If we have done anything wrong," Morgan said, "send your man to my man and they can fix it up."

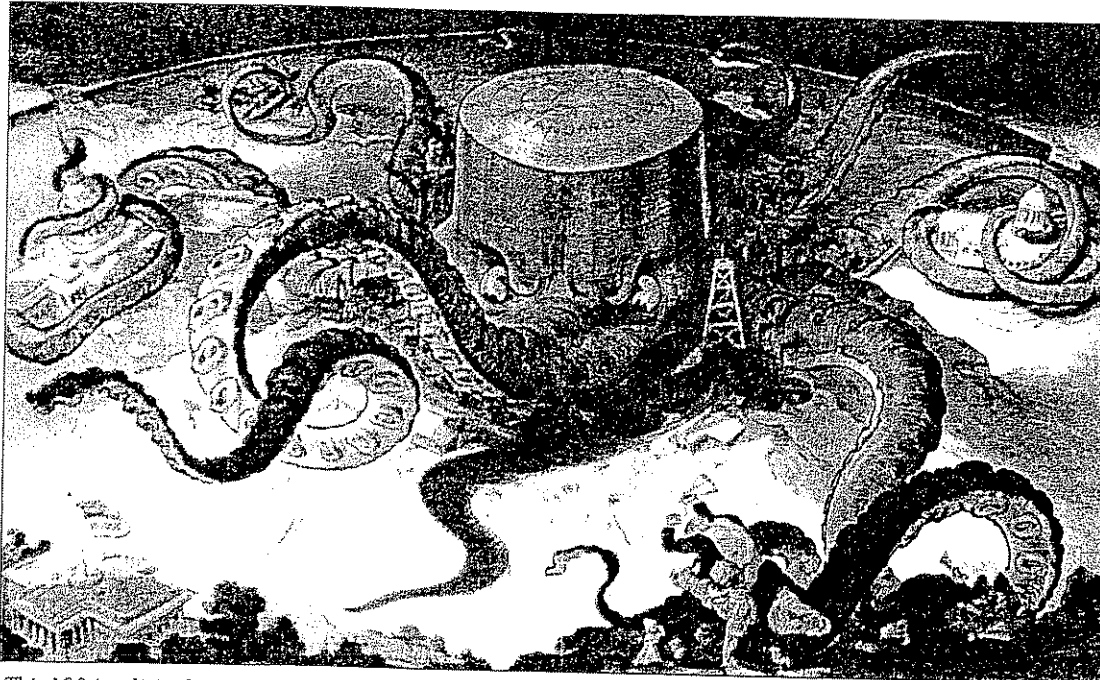
"That can't be done," Roosevelt replied. Morgan asked if Roosevelt was going to attack his steel trust and other interests. "Certainly not," the president said, "unless we find out that in any case they have done something that we regard as wrong."

Northern Securities lost in the lower courts and appealed to the Supreme Court, claiming that the Sherman Act violated the freedom to make contracts. In 1904 in a stunning opinion for the court, Justice John Marshall Harlan declared that "every combination" that eliminates interstate competition was illegal. The court included combinations of manufacturing companies and railroads. In separate opinions, however, a majority of justices indicated that they believed that the Sherman Act only banned unreasonable combinations.

The Supreme Court majority found that all monopolies tended to restrain trade and "to deprive the public of the advantages that flow from free competition." The court ordered the breakup of the Northern Securities Company into independent competitive railroads.

The voters returned Roosevelt to the White House in the election of 1904. Early the next year, Ida Tarbell and other Progressive journalists, whom Roosevelt later called "muckrakers," condemned secret railroad

(Continued on next page)



This 1904 political cartoon depicts Standard Oil as an octopus. Its tentacles wrap around the U.S. Capitol, a state house, and the oil, steel, and shipping industries. One tentacle stretches toward the White House. (Library of Congress)

rebates to Standard Oil and other big companies. The rebates had drawn controversy for years.

In December 1905, Roosevelt called on Congress to empower the Interstate Commerce Commission to ensure reasonable railroad rates for all. Congress responded with the Hepburn Act, which authorized the ICC to set maximum rail rates after finding that current ones were unreasonable. Thus, Roosevelt, the “trust-buster,” tried to shift to his preferred role as federal “regulator.”

Public pressure, however, forced Roosevelt to continue trustbusting. In 1905, he authorized a federal investigation of John D. Rockefeller’s Standard Oil Trust. This trust then controlled about 80 percent of U.S. oil refining, which produced most of the nation’s kerosene for lamps. The investigators uncovered secret rebates from railroads and concluded that Standard Oil held “monopolistic control . . . from the well of the producer to the door step of the consumer.” Roosevelt’s Justice Department filed an antitrust suit under the Sherman Act in 1906.

The following year, the federal government filed a Sherman antitrust suit against the American Tobacco Company. This trust controlled almost 90 percent of U.S. cigarette, snuff, chewing, and pipe tobacco sales. American Tobacco had bought out over 200 competitors, using such tactics as “fighting brands.” These were cigarettes sold at below cost in order to bankrupt competitors.

Even so, by the end of his second term, Roosevelt remained convinced that federal regulation of big business was the best way to tame the trusts. Filing lawsuits against individual monopolies to break them up was a costly and slow slog through the courts, he believed. Besides, he thought that “good” monopolies benefited the public with efficient distribution of new products.

Taft, the Trustbuster

Roosevelt passed on the White House to fellow Republican William Howard Taft, who won the 1908 presidential election. Taft, a former prosecutor and judge, rejected Roosevelt’s regulatory strategy and vigorously pursued trustbusting in the courts. In Taft’s single term, the Justice Department almost doubled the number of antitrust lawsuits brought in Roosevelt’s two terms. This angered both big business and Roosevelt.

In 1910, Taft’s Justice Department filed suit against U.S. Steel. The corporation controlled half of all steel production and nearly 80 percent of iron-ore reserves in the country. In 1907, the corporation, the nation’s largest industrial enterprise, had bought the competing Tennessee Coal, Iron, and Railroad Company, which further added to U.S. Steel’s domination of the industry.

The Justice Department’s suit claimed U.S. Steel was a “menace to the country and should be destroyed.” The defendants included J.P. Morgan, John D. Rockefeller, and Andrew Carnegie.

Roosevelt, out of office but still active in politics, condemned the lawsuit. He said suing all trusts was “hopeless” and even if successful would “put the business of the country back into the middle of the 18th century.”

The following year, the Supreme Court finally decided the Standard Oil and American Tobacco cases that Roosevelt had initiated. The justices found both companies were guilty of monopolization in violation of

the Sherman Act. It ordered them broken into numerous independent firms.

The Supreme Court majority, however, also ruled that only “unreasonable” restraints of trade were illegal. For example, Standard Oil had been charged with such unreasonable practices as temporarily cutting prices to drive competitors out of business. Thus, the Supreme Court’s “rule of reason” declared that monopolies alone did not violate the Sherman Act. Only when they behaved in unreasonable ways did they cross the line into illegality.

Monopolies and the Election of 1912

The controversy over what to do about monopolies erupted in the presidential election of 1912. Despite Taft’s unpopularity among pro-business conservatives, the Republicans re-nominated him for president. He remained a trustbuster, sticking by his policy of strictly enforcing the Sherman Act by filing federal lawsuits to challenge monopolization.

Roosevelt wanted the Republican Party nomination. But when the Republicans chose Taft, Roosevelt’s supporters formed the Progressive Party, which nominated him.

Roosevelt accepted monopolies as an inevitable part of a modern economy. He proposed, however, a federal commission to regulate them by inspecting their accounting books and setting maximum prices on their products. He also wanted to impose rules for hours, wages, and working conditions. Roosevelt declared that “the enslavement of the people by the great corporations . . . can only be held in check through the expansion of governmental power.”

The Democratic candidate, Woodrow Wilson, at first criticized Roosevelt’s idea of regulating monopolies. Nor did he favor Taft’s strategy of trustbusting in the courts. Rather, Wilson wanted to eliminate monopolies by reviving vigorous competition through such measures as banking reform and tariff reduction.

Toward the end of the campaign, however, Wilson embraced the idea of a federal commission to stop monopolistic practices. Thus, he seemed to edge closer to Roosevelt’s position.

The fourth major candidate in 1912 was Socialist Eugene V. Debs. Debs believed that large enterprises were inevitable. “The simple truth is, that competition in industrial life belongs to the past, and is practically outgrown. The time is approaching when it will be no longer possible.” He did not favor using antitrust laws to break up

large corporations. Instead, as a socialist, he supported worker and public ownership of large entities.

After Wilson won the election, he turned to Congress rather than the courts to deal with the monopoly problem. In 1914, Congress passed the Clayton Act, a new antitrust law that defined more clearly illegal business practices such as anti-competitive:

- price discrimination.
- corporate purchases of stock in competitive firms.
- simultaneous membership on the boards of directors of competing companies.
- sales of products on condition that the purchaser not deal with competitors.

The Clayton Act also sought to exempt peaceful union strikes from antitrust prosecution.

In other legislation, Congress created the Federal Trade Commission. Congress granted this regulatory agency the authority to investigate and issue “cease and desist” orders to businesses that violated the Clayton Act or the Federal Trade Commission Act’s ban on “unfair methods of competition.”

In 1920, the Supreme Court finally decided the U.S. Steel case begun in the Taft administration. The court ruled in favor of U.S. Steel. It found that U.S. Steel was not a monopoly and did not engage in illegal practices. The U.S. Steel decision confirmed that corporate behavior rather than just bigness determined whether a company violated the Sherman Act.

For Discussion and Writing

1. What is a monopoly? Why may it be harmful to a free-market economy?
2. Why did Roosevelt prefer government regulation of monopolies over trustbusting?
3. The Supreme Court decided that corporate behavior rather than mere bigness should determine if a monopoly is illegal. Do you agree? Why?

For Further Reading

Chace, James. *1912, Wilson, Roosevelt, Taft & Debs—The Election that Changed the Country*. New York: Simon & Schuster, 2004.

Dinunzio, Mario. *Theodore Roosevelt*. Washington, D.C.: CQ Press, 2003.

Sklar, Martin J. *The Corporate Reconstruction of American Capitalism, 1890–1916*. Cambridge, U.K.: Cambridge University Press, 1988.

(Continued on next page)

A C T I V I T Y

What Should the U.S. Do About Monopolies?

Imagine that leaders who lived during the era of trust-busting are available to discuss a modern antitrust case.

1. Divide into four groups. Assign each group one of the four leaders listed below.
2. Each group should:
 - a. Discuss what its leader thinks about monopolies and antitrust.
 - b. Read and discuss the Microsoft Case, below.
 - c. Discuss what its leader would think about what should be done about corporations like Microsoft. Develop reasons and lines of argument.
 - d. Choose one person to role play your leader in a panel discussion. Make a name tag for the leader.
3. Have the leaders meet in front of the class and discuss the question below.
4. After the debate, the class may want to vote on what they think is the best way to handle monopolies.

The Microsoft Case

The Microsoft Corporation is the world's most successful software company. Its stock is valued at hundreds of billions of dollars. Bill Gates, one of its founders, owns about 15 percent of Microsoft stock, making him the richest person in the world. Microsoft Windows software is the operating system for about 90 percent of the world's computers.

In the 1990s, the U.S. government complained about unfair practices of Microsoft. One of the practices was requiring computer manufacturers licensed to install Windows to include, or "bundle," its web browser, Internet Explorer, at no extra charge to the consumer. The government claimed that Microsoft's purpose was to drive Netscape Navigator out of the browser market. (Sales of market leader Navigator plummeted. Today Microsoft's Explorer is used by 95 percent of computer users.) Microsoft maintained that its sole purpose in bundling Explorer with Windows was to make it easier, more convenient, and less costly for consumers to use a computer. It also maintains that Explorer overtook Navigator because it is a far superior browser.

Question for the Panel to Discuss: From what you know about monopolies and antitrust, what do you believe should be done about corporations like Microsoft?

Leaders

1. **John D. Rockefeller:** Leave monopolies alone to efficiently produce and distribute products according to freedom of contract and the right of property.
2. **Theodore Roosevelt (or Woodrow Wilson):** Regulate the business practices, prices, and labor conditions of monopolies.
3. **William Howard Taft:** Break up all illegal monopolies by bringing lawsuits against them under the Sherman Act.
4. **Eugene V. Debs:** Monopolies are inevitable. They should be taken over by government and run in the public interest.

For use with the activity on pages 15-16.

Federal Trade Commission v. Staples and Office Depot

970 F. Supp.1066 (DDC 1997)

The federal judge granted an injunction to stop the merger, pending a full FTC hearing. The judge ruled that the FTC was likely to prove in the hearing that the effect of the proposed merger "may be substantially to lessen competition" in violation of Sec. 7 of the Clayton Act. He agreed with all the FTC arguments against the merger, especially the agency's all-important definition of the "product" as "consumable" office supplies. The judge also cited documents from the companies that even they considered only the superstore chains to be competitors in the office-supply business and not other types of retailers like Wal-Mart.

Because of this ruling, Staples and Office Depot abandoned their plan to merge.

